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16 *Attorney for Defendants Don M. Bailey,
17 Michael H. Mulroy, Stephen L. Cartt, and
 David Young*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**IN RE QUESTCOR
PHARMACEUTICALS, INC.
SECURITIES LITIGATION**

CASE NO.: 8:12-CV-01623 DMG (JPRx)

(1) DEFENDANTS' RESPONSE AND STATEMENT OF NON-OPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION; and

(2) DECLARATION OF WINSTON P.
HSIAO (under separate cover).

Date: January 9, 2015
Time: 9:30 a.m.
Judge: Hon. Dolly M. Gee
Ctrm.: 7

1 Pursuant to Local Rule 7-9, Defendants Questcor Pharmaceuticals, Inc.
2 (“Questcor” or the “Company”), Don M. Bailey, Michael H. Mulroy, Stephen L. Cartt
3 and David Young (the “Individual Defendants,” and with Questcor, the “Defendants”)
4 submit this Response and Statement of Non-Opposition to Plaintiffs’ Motion for
5 Class Certification.

6 Plaintiffs’ Motion opens with a “Factual Statement” that merely parrots and
7 paraphrases the allegations in the Complaint, which Plaintiffs filed twenty (20)
8 months ago. The record in this case does not support those allegations, and
9 Defendants look forward to demonstrating the baselessness of Plaintiffs’ case at
10 summary judgment.

11 Further, and notwithstanding the Non-Opposition, Defendants reserve all of
12 their rights with respect to defenses against Plaintiffs’ claims, including the right to
13 return to the Court to, among other things, seek de-certification of the class pursuant
14 to Federal Rule of Civil Procedure 23(c)(1)(C). On October 23, 2014, Questcor
15 deposed Dr. Steven P. Feinstein, who filed a report on behalf of Plaintiffs’ class
16 certification motion. During the deposition, Dr. Feinstein indicated he would
17 produce additional materials following his deposition that may bear on class
18 certification issues.¹ Dr. Feinstein has yet to produce those materials, and Plaintiffs
19

20 ¹ See Declaration of Winston P. Hsiao (“Hsiao Decl.”) Ex. 1 (Deposition Transcript
of Dr. Steven P. Feinstein) at 50:8-15:

- 21 Q. Have you read NERA-authored expert reports on this topic?
A. Yes.
22 Q. Do you have them in your files?
A. As I sit here today, I think likely, probably. I’m not sure.
23 Q. I’d like you to produce them, please.
A. Okay.

25 See also id. at 63:18-64:1:

- 26 Q. When you say it’s widely used, what’s your basis for that other than
that [sic] NERA reports that you referenced earlier today?
27 A. That’s what I’m referring to.
28 Q. And you’re going to produce the NERA reports that you have in that
connection from your files, correct?

(cont’d)

1 have indicated that such materials may not be forthcoming. Therefore, Defendants
2 may need to pursue those materials.

3 In addition, documents produced by Plaintiffs during discovery indicate that
4 Plaintiffs utilize at least two investment advisors, LSV Asset Management (“LSV”)
5 and AJO, LP (“AJO”). Defendants believe that LSV and AJO may possess
6 information that bears on issues related to both class certification and the underlying
7 merits of Plaintiffs’ claims. However, due to limited availability, Defendants were
8 not able to depose a 30(b)(6) designee from LSV until October 30, four days prior
9 the deadline for opposing class certification. Meanwhile, AJO has to this day
10 refused to offer a date on which Defendants may depose its 30(b)(6) designee, even
11 though Questcor noticed the AJO deposition on September 30. Defendants remain
12 optimistic that AJO will comply with the deposition subpoena without need for court
13 intervention, but Defendants may need to pursue this deposition through the courts as
14 well.

15 For the foregoing reasons, Questcor files this Non-Opposition at this time, but
16 expressly reserves all rights and remedies available to it.

17 Dated: November 3, 2014
18

19
20 SKADDEN, ARPS, SLATE, MEAGHER &
21 FLOM LLP

22 By: _____ /s/Peter B. Morrison

23 Peter B. Morrison
24 Attorney for Defendant
25 Questcor Pharmaceuticals, Inc.
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27 (cont’d from previous page)

28 A. The reports and their, their monographs, their monographs on the
subject.

1 LATHAM & WATKINS LLP
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3 By: /s/Peter A. Wald
4 Peter A. Wald
5 Attorney for Defendants
6 Don M. Bailey, Michael H. Mulroy, Stephen L.
7 Cartt, and David Young
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